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LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4588

ME
First D.

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October 7, 1993

Mr. James J. Rees
Deputy County Counsel
County of Santa Clara
Office of the County Counsel
70 West Hedding Street
San Jose, CA 95110-1770

Dear Mr. Rees:

This is in response to your letter of September 30, 1993 requesting the views of this office on questions regarding Revenue and Taxation Code Section 63.1, relating to the parent/child exclusion from change in ownership.

Section 63.1 was amended by Chapter 769 of the Statutes of 1988 (AB 3020) and the Board issued a letter to assessors dated February 24, 1989, explaining the provisions of Chapter 769 (LTA 89/16). Your letter indicates that your reading of paragraphs 8 and 9 of LTA 89/16 is that the amendments made to section 63.1 by Chapter 769 "do not apply retroactively to transfers through the medium of a trust." You further ask whether the language of Chapter 769 has the effect of "exempting" a parent/child transfer through the medium of a trust occurring on August 27, 1988 (prior to the January 1, 1989, effective date of the Chapter) from the requirement that the parent/child exclusion claim be filed within three years after the date of the transfer for which the claim is filed. Apparently you feel that Chapter 769 and LTA 89/16 might be interpreted in such a way as to exclude from the three-year filing requirement transfers through the medium of a trust occurring prior to the effective date of the Chapter. For the reasons set forth below, I conclude that the suggested interpretation is incorrect.

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As I discussed with you during our telephone conversation, I do not believe that the language of LTA 89/16 supports the conclusion you have stated. In any case, it should be recognized that LTA 89/16 is merely the staff's attempt to provide an informative explanation of the legislation. The language of section 63.1, as amended by Chapter 769, is the controlling authority. For that reason, I will limit my discussion to the terms of that legislation.

Section 63.1 implements the provisions of Proposition 58 which was adopted by the voters on November 6, 1986. Section 63.1 excludes certain transfers of real property between parents and their children from change in ownership for property tax purposes. Section 63.1 was enacted by Chapter 48 of the Statutes of 1987, effective June 17, 1987. As originally enacted, Section 63.1 required that an eligible transferee file a claim with the assessor in order to qualify for the exclusion, but there was no time limit for filing this claim. Further, while various terms were defined in the legislation, there was no definition of the term "transfer". Nevertheless, it was the staff's conclusion that any transfer of real property between parents and children through the medium of a trust which qualified as a change in ownership under the general change in ownership statutes (see Revenue and Taxation Code Section 61, subdivisions (f) and (g)) could qualify as an excludable transfer under the provisions of Section 63.1, provided the other requirements were satisfied.

Section 63.1 was amended by Chapter 769 of the Statutes of 1988 in order to correct a number of interpretative problems which surfaced after the enactment of the original provision. Pertinent to our discussion were the following two changes. First, subdivision (c)(7) was added defining the term "transfer" as including transfers through the medium of a trust. Second, subdivision (d) was amended to add the requirement that "any claim" under section 63.1 be filed within three years after the date of the transfer of real property for which the claim is filed. In addition, section 4 of Chapter 769 added general law language providing that with the exception of the definition of "transfer" in subdivision (c)(7), all of the amendments to section 63.1 made by the act apply to transfers of real property which occurred on or after November 6, 1986. The questions you have raised relate to the interplay of these three provisions.

As I explained to you, the addition of the definition of "transfer" was sponsored by the State Bar probate section. Although the Board staff always believed that the benefits of section 63.1 could be applied to transfers through the medium of a trust, the State Bar wished to have express provisions which would remove any shadow of a doubt on this question.

The amendment adding the three-year time limit for filing claims for the exclusion was sponsored by the California Assessors Association. The assessors' concern was with the potential administrative problems which could arise if parent/child exclusion claims were filed many years after the fact. The three-year time limit mirrors a similar three-year limit on filing for the benefits under Proposition 60 which was also enacted in November 1986. (See Revenue and Taxation Code section 69.5, subdivision (f).)

Finally, the provisions of section 4 of Chapter 769 were added in order to provide equal treatment to all persons applying for the benefits of section 63.1. Most of the amendments were substantive changes in the requirements and conditions for the benefit. If the changes made by Chapter 769 had been applied prospectively only, then different standards for the same benefit would have been applied depending upon when the application was made. Section 4 was designed to avoid this inequitable situation. Since subdivision (c)(7) already reflected existing law, there was no need to include it in section 4. Further, it is my recollection that (c)(7) was expressly excluded in order to avoid any basis for interpretation that the addition of the definition of "transfer" was a change in existing law. If (c)(7) had been lumped in with the other changes to section 63.1, it could have created the basis for an argument that this was also a change in existing law, i.e., prior to Chapter 769 the subject transactions were not considered to be transfers and were not, therefore, changes in ownership. Expressly excepting (c)(7) from section 4 avoided these arguments.

A superficial argument can be made, of course, that since (c)(7) is excepted from section 4, transfers through the medium of a trust should not be recognized as a transfer for purposes of section 63.1 until the effective date of Chapter 769, January 1, 1989. That argument is erroneous for the reasons stated above. Further, it would not help a claimant who received property via a trust prior to 1989. Acceptance of the argument would simply mean that pre-1989 transfers through the medium of a trust would not be recognized for purposes of the section 63.1 benefit.

With this background in mind, we can turn to your question of whether a pre-1989 transfer through the medium of a trust is "exempt" from the three-year claim filing requirement. The answer, clearly, is no. The language added to section 63.1, subdivision (d), expressly provides that "any claim" under the section shall be filed within three years after the date of the transfer of real property for which the claim is filed. The

reference to "any claim", given its common, ordinary meaning, clearly indicates a legislative intent to require that all claims meet the time limit. There is certainly no ambiguity which would leave room for interpretation that the Legislature intended to exclude one class of claim from this requirement. Further, this language is one of the amendments covered by section 4 of Chapter 769, providing that it applies to transfers which occur on or after November 6, 1986. Thus all claims, regardless of the type or date of transfer, were made subject to the three-year filing requirement. (It should be noted that applying the three-year time limit to transfers occurring on November 6, 1986 meant that claimants had at least eleven months after the effective date of Chapter 769 in which to file timely claims. Thus, the legislation did not place an impossible burden on section 63.1 claimants.) Finally, the interpretation of section 63.1 by the Board's staff has been consistent with the views expressed above. It has always been our understanding that all claims filed under section 63.1 are subject to the three-year filing limit found in subdivision (d).

There have, of course, been additional amendments to the filing requirements of section 63.1 since the enactment of Chapter 769. The most recent enactment may be of particular interest since it too modifies the filing time limit on a retroactive basis. Chapter 709 of the Statutes of 1993 (SB 675) provides, in effect, that notwithstanding the previous time limits, a claim under section 63.1 shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental assessment or escape assessment issued as a result of the transfer of real property for which the claim is filed. This provision is made applicable to the transfers of real property occurring on or after November 6, 1986. Many claimants have, for a variety of reasons, failed to comply with the three-year filing requirement. Chapter 709 is an attempt to address this problem in a reasonable way. Perhaps Chapter 709 will be helpful to the claimant whose problem you are now reviewing.

Please give me a call if you would like to discuss any of these matters further.

The views expressed in this letter are, of course, only advisory in nature.

Mr. James J. Rees

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October 7, 1993

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard H. Ochsner", written over the typed name.

Richard H. Ochsner
Assistant Chief Counsel

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cc: Mr. John Hagerty -- MIC:63
Mr. Verne Walton -- MIC:64